

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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**OCT 26 2010**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0224-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
STANLEY WADE STARR,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20032054

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Stanley Wade Starr

Hinton, OK  
In Propria Persona

B R A M M E R, Presiding Judge.

¶1 Following a jury trial conducted in his absence, petitioner Stanley Starr was convicted of conspiracy, theft, and three counts of presenting a false instrument for filing.

The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling nine years. We affirmed Starr's convictions and sentences on appeal. *State v. Starr*, No. 2 CA-CR 2005-0130 (memorandum decision filed Aug. 21, 2006). In 2009, we granted relief on Starr's petition for review of the court's denial of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., finding the petition was timely and remanding for consideration on the merits. *State v. Starr*, No. 2 CA-CR 2009-0227-PR (memorandum decision filed Dec. 28, 2009). Starr again sought post-conviction relief in 2010, raising claims of prosecutorial and judicial misconduct and asserting trial and appellate counsel had been ineffective. The court dismissed the petition without conducting an evidentiary hearing, and this petition for review followed. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 Starr claims the trial court abused its discretion by finding his claims of prosecutorial and judicial misconduct precluded and by rejecting his claims of ineffective assistance of trial and appellate counsel. He seeks dismissal of his case "with prejudice," presumably asking us to vacate his convictions and sentences. To the extent Starr's petition for post-conviction relief presented claims he either raised or could have raised either on appeal or in his first post-conviction proceeding, they are precluded under Rule 32.2(a) (precluding claims based on any ground finally adjudicated on merits on appeal or in any previous collateral proceeding, or waived at trial, on appeal, or in any previous collateral proceeding). Moreover, nothing in the petition for review establishes

that Rule 32.2(a) is inapplicable to Starr's petition filed below or that he should be excused from that rule's preclusive effect. In addition, in order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel's performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Starr's petition for post-conviction relief. The court denied relief in a detailed and thorough minute entry order that clearly identified Starr's arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court's ruling and see no need to reiterate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 To the extent Starr contends the trial court failed to address his claim of newly discovered evidence pursuant to Rule 32.1(e), a theory he asserted obliquely below, the court implicitly and correctly rejected any claim based on that ground when it found Starr's claims of prosecutorial and judicial misconduct were precluded because they could have been raised on appeal. *See id.* (Rule 32.1(e) applicable to facts discovered only after trial, despite defendant's due diligence). In addition, to the extent we understand the additional issues set forth in Starr's "List of Additional Issues Presented To, But Not decided By, Court of Appeals And Which May Need To Be Decided If Review Is Granted," we decline to address them either because they were raised and addressed in the court's ruling below, which we have adopted in this decision,

or because they do not appear to have been raised below at all. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review any issue on which trial court had not first had opportunity to rule).

¶5 We grant the petition for review but deny relief.

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge